



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
[Redacted])	ISCR Case No. 11-12137
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

06/21/2013

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on April 2, 2008. On January 7, 2013, the Department of Defense (DOD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

Applicant answered the SOR on February 2, 2013, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 18, 2013, and the case was assigned to an administrative judge on March 28, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 8, 2013, scheduling the hearing to be conducted by video teleconference on April

23, 2013. The hearing was cancelled because of budget constraints and the unavailability of video teleconferencing equipment in the area where Applicant lives and works. The case was reassigned to me on May 8, 2013, and DOHA issued a second notice of hearing on May 15, 2013, scheduling the hearing for June 4, 2013. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) 1 through 15, which were admitted without objection. The exhibit lists for GX 1 through 3 and AX 1 through 15 are attached to the record as Hearing Exhibits (HX) I and II.

I kept the record open until June 11, 2013, to enable Applicant to submit additional documentary evidence. He timely submitted AX 16 through 19, which were admitted without objection. On June 13, 2013, Applicant submitted AX 20. Department Counsel did not object to the untimely submission, and it was admitted. Department Counsel's comments regarding AX 16 through 20 are attached to the record as HX III and IV. DOHA received the transcript (Tr.) on June 13, 2013.

Findings of Fact

In his answer to the SOR, Applicant admitted all the allegations in the SOR except SOR ¶¶ 1.m and 1.n, which he denied. His admissions in his answer and at the hearing are incorporated in my findings of fact.

Applicant is a 55-year-old analyst employed by a defense contractor since June 2007. He has worked for defense contractors since January 1999. He served on active duty in the U.S. Army from February 1977 to May 1983. He has held a security clearance since July 2002.

Applicant married in January 1984. He and his wife have two sons, ages 29 and 22. The older son is an Army veteran of the war in Iraq, and the younger son is an active-duty soldier recently returned from Afghanistan. (Tr. 38.)

Applicant began to have financial problems during 1998 through 2003, when he was working away from home and maintaining two households. (GX 2 at 5.) He and his wife bought a house that they could not afford in 2001. About three or four months after they moved into the house, his wife was diagnosed with breast cancer and unable to work while receiving treatment. (Tr. 64.)

In July 2011, Applicant was diagnosed with heart problems that required that a stent be implanted. Six months later, his wife was diagnosed with diabetes and was hospitalized. Four months later, she was hospitalized again for severe hypertension. (Tr. 42-43.)

In 2013, Applicant's employer initiated a medical incentive plan that entitled him and his wife to \$600 apiece per year for medical expenses. He is exploring ways to use his medical incentive money to defray some of his medical bills. (Tr. 45.)

The evidence concerning the delinquent debts alleged in the SOR is summarized below.

SOR ¶¶ 1.a-1.b, judgments for \$1,036 and \$984. These judgments were listed as “medical” on Applicant’s credit bureau report (CBR) dated September 25, 2012. However, he submitted evidence that the plaintiff in both cases was his landlord, and the judgments were for unpaid rent. Both judgments have been satisfied. (AX 12 at 2; AX 14; AX 16.)

SOR ¶¶ 1.c-1.f, 1.i, 1.k, and 1.l, delinquent medical bills for \$695, \$142, \$122, \$161, \$182, \$256, and \$41. Applicant testified that all his medical bills are being collected by the same collection agency, and he is making monthly payments to the agency. (AX A; Tr. 66-67.) Applicant submitted a list of medical debts being handled by the same collection agency. Several of the amounts are similar to the debts alleged in the SOR, but the account numbers are different. His evidence does not indicate whether the account numbers were assigned by the collection agency or the original creditor. His evidence reflects that the total amount of medical debts has been reduced from \$3,284 to \$2,224. (AX 17.)

SOR ¶ 1.g, cable bill for \$285. In his response to DOHA interrogatories in October 2012, Applicant stated that he would pay this debt in full on November 2, 2012. (GX 2 at 14.) At the hearing, he submitted evidence of a \$25 payment on April 19, 2013 “to show good faith” and promised to make an additional payment on May 17, 2013. (AX 2.) There is no evidence that he made the May 2013 payment. He testified that he is able to pay the debt in full, but he is trying to resolve some of his larger debts first. (Tr. 70-71.)

SOR ¶ 1.h, internet service bill for \$1,312. Applicant is disputing the amount of this debt. He asserts that the creditor did not adequately disclose the high cost of streaming large amounts of internet data. His family used the internet to watch movies and listen to music, without realizing that they were being billed for the amount of data that was transmitted. He sent the creditor two letters in 2009, complaining about misrepresentation of the costs of the program, but he has not received a response. He cancelled the service in 2009. He testified that he “believed” that he wrote another letter to the creditor in early 2012, while he was hospitalized, but he did not provide a copy of the letter. He did not submit any documentary evidence of his contract with the internet provider or identify any specific language that he believed was deceptive or deficient. (Tr. 71-76; GX 2 at 20-21.)

SOR ¶ 1.j, collection account for \$165. This debt has been paid in full. (AX 3; AX 15.)

SOR ¶ 1.m, credit card account charged off for \$409. Applicant testified that he opened this account to restore his credit. The account required that he keep \$200 on deposit, and he could not charge more than he had on deposit. When he noticed numerous fees being added to his account, he cancelled it, and received a bill for \$409.

In response to DOHA interrogatories in October 2012, he submitted a spreadsheet reflecting that he intended to pay \$180 on this account on November 16, 2012; \$100 on November 30, 2012; and \$49 on December 14, 2012. (GX 2 at 14, 16.) At the hearing, he testified that he disputed the account with the creditor, who has not responded. He testified that a copy of his letter to the creditor was on a computer hard drive that malfunctioned and became unusable. (Tr.77-79.) He filed a dispute with the credit reporting agencies in October 2012. He was informed that the information in his dispute letter was incomplete, but he had not yet resubmitted it as of the date of the hearing. (Tr. 81-82; AX 8.)

SOR ¶ 1.n, telephone bill placed for collection for \$156. Applicant disputed this debt on the ground that he has never had an account with the creditor. He testified that he called the creditor, who was unable to find an account in his name. (Tr. 79-80.) He filed a dispute with the credit reporting agencies in October 2012, but he was informed that it was incomplete, and he had not yet resubmitted it as of the date of the hearing. (Tr. 81-82; AX 6; AX 8.)

SOR ¶ 1.o, credit card account in collection for \$2,738. Applicant testified that this account was for a company credit card issued to him by a former employer. He exceeded his credit limit and the debt was being collected by payroll deduction until he changed employers. He has not contacted the creditor or taken any action to resolve this debt. (Tr. 83-84.)

SOR ¶ 1.p, delinquent mortgage in foreclosure, with a balance due of \$225,000. Applicant and his wife purchased a home for \$225,000 in 2001, with no down payment. They financed the purchase with a loan for 80% of the purchase price secured by a first mortgage, and a loan for 20% of the purchase price secured by a second mortgage. Their initial monthly payment was about \$1,385. Applicant testified that they soon realized that they could not afford the house payments. (Tr. 52-53.) They refinanced several times when expenses such as insurance increased.

Applicant's wife and younger son lived in the home, and Applicant maintained a second residence at his place of duty in another state. They began having difficulty making the payments in mid-2006. In July 2007, his older son returned from overseas with his wife and three children, and was discharged from the Army. They lived with Applicant and his wife for six months, during which time his son was unemployed. Applicant filed a Chapter 13 bankruptcy petition in August 2007, in an effort to prevent foreclosure of his home. The petition was dismissed in January 2008. (GX 3 at 1.) The record does not reflect the reason for dismissal of the petition.

Applicant's September 2012 CBR reflected that foreclosure was started, and that the date of last activity was October 2006. (GX 3 at 2.) As of May 2008, past-due payments totaled about \$32,000 (Tr. 56-57; GX 2 at 6.) Applicant tried to modify the loan by adding the past-due payments to the balance of the loan, but the lender would not agree. (Tr. 57.) He testified that, in September 2008, he received a telephone call from a realtor, informing him that the house had been sold and offering him "cash for

keys” in the amount of \$1,200. Applicant accepted the offer and moved out of the house. (Tr. 60-60, 93.) He testified that he never received an IRS Form 1099-A or 1099-C reflecting the sale of the house. He testified that he contacted the lender who foreclosed on the property and the bank that bought the house and resold it, but was unable to obtain any documentation of the sale. (Tr. 63.) He did not submit any documentary evidence reflecting the status of the foreclosure or the resolution of any deficiency.¹

In his response to DOHA interrogatories in October 2012, Applicant submitted a personal financial statement reflecting net monthly income of \$5,652, expenses of \$2,557, and a net remainder of \$3,095. He reported that he owned a 12-year-old truck, on which he made the final payment in October 2012. (GX 2 at 23.) At the hearing, he testified that his monthly gross income had increased by about \$100, but his medical expenses had increased, reducing his net remainder to about \$1,500, which he is using to pay his delinquent debts. He testified that he had a written budget “at one time,” but that it has been overcome by the cost of his wife’s prescriptions and urgent maintenance on his truck. (Tr. 88.)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

¹ Before adjourning the hearing, I pointed out to Applicant that any sale of the property should be reflected in public records that usually are available on government web sites. However, he did not submit any further evidence about the foreclosure in his post-hearing submission.

extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns

about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his September 2012 CBR, establish the disqualifying conditions in AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations") His admission that he purchased a home that he could not afford establishes AG ¶ 19(e) ("consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis").

A security clearance adjudication evaluates an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

The following mitigating conditions are potentially relevant:

AG ¶ 20(a): the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, many are unresolved, and they did not occur under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant encountered several conditions beyond his control: his wife's medical problems, his medical problems, and the financial problems of his son. The expenses incurred to maintain two households were a matter of choice, not a condition beyond his control. Applicant has acted responsibly regarding his medical bills. It is difficult to track the medical bills, because the original creditors are not reflected on the CBR, and the account numbers appear to have changed as the debts were purchased or transferred. However, the evidence reflects that Applicant has diligently tried to resolve his medical bills. He has resolved the two judgments for unpaid rent alleged in SOR ¶¶ 1.a and 1.b. He resolved the collection account alleged in SOR ¶ 1.j. However, he has not acted responsibly regarding the debts alleged in SOR ¶¶ 1.g, 1.j, 1.m, and 1.n-1.p.

AG ¶ 20(c) is not established. Applicant would have received financial counseling as a prerequisite for his petition for Chapter 13 bankruptcy in August 2007, but his financial problems are not yet under control.

AG ¶ 20(d) is established for the two judgments alleged in SOR ¶¶ 1.a and 1.b; the medical bills alleged in SOR ¶¶ 1.c-1.f, 1.i, 1.k, and 1.l; and the collection account alleged in SOR ¶ 1.j. It is not established for the delinquent cable bill alleged in SOR ¶ 1.g, because Applicant has repeatedly promised to pay the bill in full, admitted at the hearing that he is able to pay it in full, but has made only one token payment of \$25.

AG ¶ 20(e) is established for the disputed telephone bill alleged in SOR ¶ 1.n. I found Applicant's testimony that he never had an account with this creditor credible. However, this mitigating condition is not established for the internet service bill alleged in SOR ¶ 1.h or the credit card account alleged in SOR ¶ 1.m. While it appears that Applicant did not fully understand the terms of his contracts with the creditors in SOR ¶¶ 1.h and 1.m, he has not shown that the contracts were deceptive or unclear. In his October 2012 response to DOHA interrogatories, he promised to pay the debt in SOR ¶ 1.m, and he has not satisfactorily explained why he decided to dispute a bill that he previously promised to pay. Thus, he has not established a "reasonable basis" for disputing the debts in SOR ¶¶ 1.h and 1.m. Furthermore, after learning that his dispute letters for these two debts were incomplete, he had not resubmitted them as of the date of the hearing.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant

circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant served honorably in the U.S. Army, and he has served as a contractor employee and held a clearance for many years. He has incurred medical expenses for himself and his wife, and he is systematically paying his medical debts. On the other hand, he has made a series of bad financial decisions, starting with the purchase of a home in 2001 that he could not afford, followed by an internet contract that he did not fully understand, and a credit card account with exorbitant fees. He has a plan to resolve his medical debts, but he has adopted an *ad hoc* approach to his other debts. He has put the cable service debt alleged in SOR ¶ 1.g on the "back burner," even though he is able to pay it. He has not addressed the delinquent credit card account alleged in SOR ¶ 1.o. He has not shown that the delinquent mortgage loan on his home, subsequent foreclosure, and any possible deficiency after foreclosure are resolved.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his financial problems. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to continue his eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Paragraphs 1.a-1.f:	For Applicant
Paragraphs 1.g-1.h:	Against Applicant
Paragraphs 1.i-1.l:	For Applicant
Paragraph 1.m:	Against Applicant
Paragraph 1.n:	For Applicant
Paragraphs 1.o-1.p:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge